



The Office of Construction Safety and Health

At the National Institute for Occupational Safety and Health—NIOSH



Webinar Series:

Insurance and Workers Compensation for Construction—Untangling the Mysteries

Webinar 1: Setting the stage: Insuring the Construction Industry – General Contractors vs. Sub-Contractors – What's the Difference?

January 19, 2017

The findings and conclusions in this presentation were developed in partnership with Willis Towers Watson, and they have not been formally disseminated by the National Institute for Occupational Safety and Health, and should not be construed to represent any agency determination or policy.



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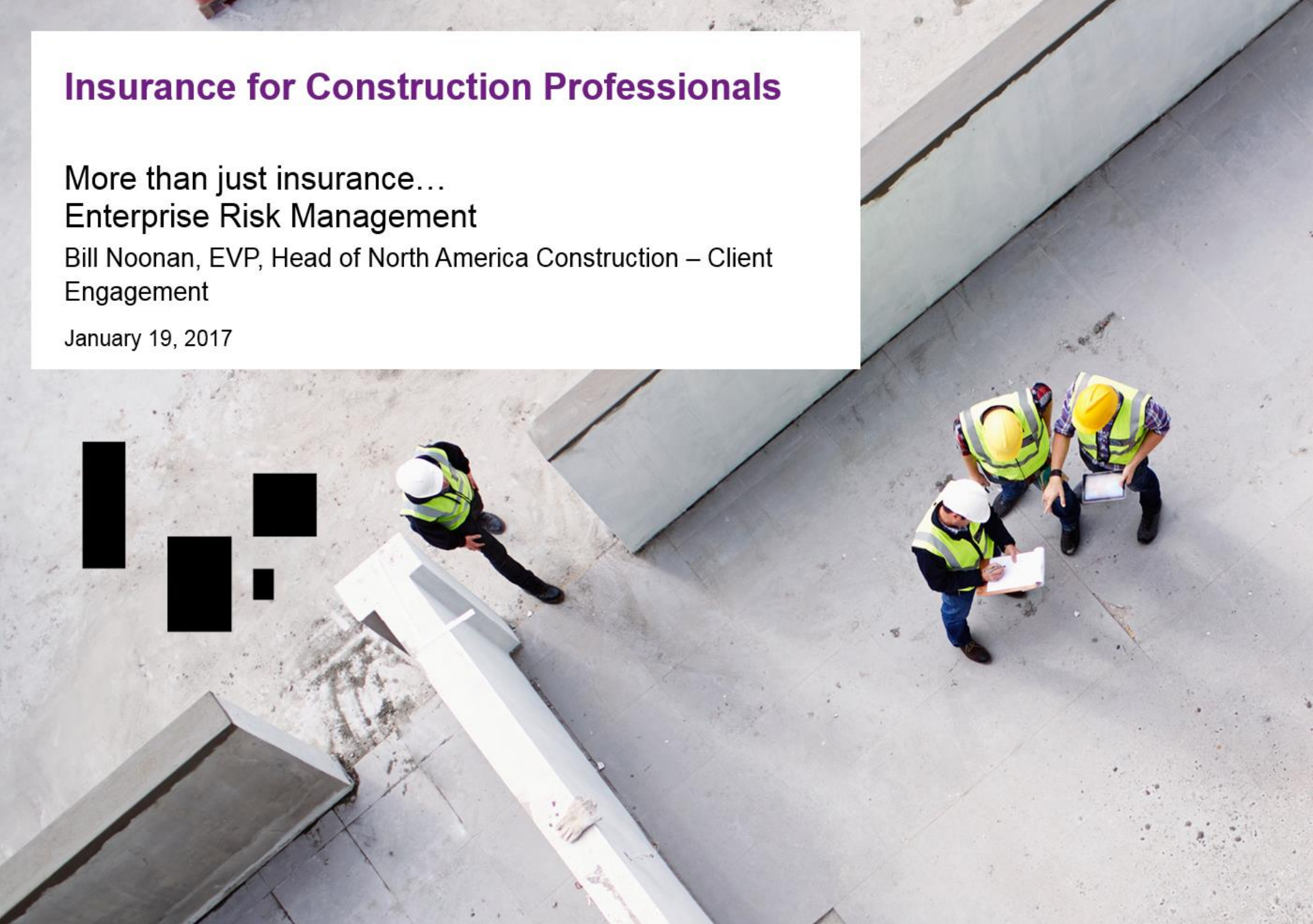


Insurance for Construction Professionals

More than just insurance...
Enterprise Risk Management

Bill Noonan, EVP, Head of North America Construction – Client
Engagement

January 19, 2017



The Role of Insurance for Contractors

- Safeguard a contractor's assets against unforeseen/catastrophic losses.
- Pays on behalf of a contractor, financial payments that the contractor may be liable for as a result of damage or injury to a third party.

Anatomy of a “Trouble Project”

- RFP Process – Should we have been looking at this project to begin with?
- “The Bad Deal” – Were the contract terms so poor that you lost money before a shovel even went in the ground.

What about the “Builder”?

- How often do we look at a troubled project & find out that Operations and Risk Management were never involved in the business deal.
- Business Development should bring in Operations and Risk Management for a “second set of eyes”.

The Business Deal

- Know your contract
- “If all else fails, read the contract”
- Put safety in the business deal (i.e. Buy 6 foot fall protection from the start)
- Understand your safety responsibilities right from the start

Project Earnings

- “What You See”
 - Pre-Construction to Project close out, is how most judge financial success on a construction project.
- What You Don’t See
 - The costs paid by the company after the project is finished.
 - Deductibles paid by the company, higher insurance rates and direct bottom line hits.

Environmental / Toxic Issues

- Mold
- Soil / Ground Water
- Lead
- Asbestos

New Core and Shell

- Soil issues are very important.
- Know your local EPA regulations.
- Know the history of the land you are building on.
- Does the design of your building match local weather conditions.
- Does the schedule make sense?

Interior / Renovations

- Conditions that exist previous to your contract or construction
- “Once you attempt to repair or remediate, the problem becomes yours for the life of the building”.

Remediation / Abatement

- Best Practice is to have the owner have direct contract with the subcontractor.
- Make sure that the subcontractor has proper insurance coverage and limits and that the right AI (Additional Insured) Endorsements are used.

Quality Assurance

- Construction Defect litigation are the highest exposure claims to construction companies.
- Insurance companies are finding more and more ways to deny coverage or greatly limit coverage available to contractors.
- We have to build “better” and “smarter”.

Residential Building

- The highest exposure on defect issues.
- QA/QC has to be a part of the project culture.
- Mock Up Simulations are becoming standard on many projects.

Insurance Certificates

- Why are they important?
- What do they really mean?
- Are all certificates the same?

“WHY”

- Most construction professionals are told what to get (i.e. Certificates, Endorsements)
- But few are ever told “why” we need them, or how they effect the bottom line of their project and the company.
- Most people do not like doing something if they don’t know the reasons why they are doing it!

Common Misconception

- Additional Insured coverage is valid as long as you have a certificate from the subcontractor.
- Simple Rule – **Without a contract (or purchase order) most subcontractor policies do not provide coverage to the GC as an additional insured.**

With or Without AI Coverage

- “Without”
 - Settlement with injured worker is \$1 million dollars.
 - 1st Million comes from the General Contractor’s carrier.
 - General Contractor pays first \$250,000 out of their bottom line.
- “With”
 - Same \$1 million dollar settlement.
 - 1st Million comes from AI carrier (subs carrier).
 - No hit to General Contractor’s bottom line.

Different AI Endorsements

- Best Case – ISO CGL 20 10 1185 edition, “arising out of” language.
- Pure CM work, GC holds no contracts with subcontractors. GC needs the ISO 20-26 endorsement, “designated organization” language.
- Watch out for “residential exclusions” and no “completed operations” coverage.

Wrap-Ups

- CCIPs, OCIPs, DCIPs
 - What are they?
 - How do they work?
 - How are they different from traditional insurance programs?
 - What's important for the field to know?

Types of Insurance

Casualty

- Worker's Compensation
- General Liability
- Automobile
- Excess Umbrella
- CCIP

Property

- Builders Risk
- Contractor's Equipment

Specialty

- Professional Liability (E&O)
- Bonding / SDI

Worker's Compensation Insurance

- Provides benefits to employees who suffer a job related injury due to an accident or occupational disease
 - Five categories for WC benefits
 - Medical Expenses
 - Loss of Wages (% of wage, subject to min and max and is non-taxable)
 - Schedule benefits for specific injuries (hand, finger, etc.)
 - Rehabilitation of disabled employee
 - Death Benefits
 - Payments are made regardless of fault
 - Therefore, cannot sue the employer, but may sue third parties whose negligence caused the accident.
 - Generally, there is no limit to the size of the claim payout under this coverage.

Coverage A – Worker's Compensation Insurance

Important Note regarding Subcontractors:

- In most states, the Worker's Compensation statute specifies that general contractors are liable for Worker's Compensation benefits to the injured employee of an uninsured subcontractor.
 - For this reason, we must be diligent in obtaining COI's for both the corporate and CCIP programs.

What is the Worker's Compensation EMR?

EMR: Experience Modification Rating

- A nationwide industry standard rating that is applies to every employer based on their individual Worker's Compensation Loss Experience.
- The NCCI of Individual Rating Bureau establishes a median loss level (1.00). If the EMR is above 1.00, this indicates loss experience that is worse than expected; lower than 1.00 indicates losses better than expected.
- Many General Contractor's (and owners) have a policy that they will not do business with any subs that have an EMR that is greater than 1.00

General Liability Insurance

- Provides coverage for those sums a contractor becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to others (third parties).
- GL Insurance pays for:
 - Damages up to the policy limits which the insured is held liable
 - Defense and investigation costs, in addition to or included within policy limits.

Important to understand this difference.

GL Limits of Liability

- Each Occurrence Limit – The most that can be paid out in any one accident
- General Aggregate Limit – The most that a policy will pay for losses, both Bodily Injury and Property Damage, in any one policy period.
 - Only applies to claims occurring during construction
- Products/Completed Operations Aggregate Limit – The most that a policy will pay for in losses, both Bodily Injury and Property Damage, in any one policy period.
 - Only applies to claims occurring after a project is completed

“Standard” General Liability Coverage Grants

Type of Coverage	Coverage Grant
Premises Operations	Contractor’s Legal Liability to others for accidents arising out of work it performs
Independent Contractors Liability	Contractor’s Legal Liability for accident arising out of work performed for General Contractor by others
Blanket Contractual	Liability of others that a contractor assumes under a contract
Broad Form Property Damage	A Contractor’s Legal Liability for property damage to property owned by others

Business Auto

- The Business Auto policy covers:
 - Liability – provides coverage for those sums a contractor is legally obligated to pay as damages for bodily injury or property damage arising out of an owned, leased, hired or non-owned vehicle
 - Comprehensive – provides coverage for direct physical damage losses to the vehicle caused by fire, theft, hail, vandalism and other named perils
 - Collision – provides coverage for direct physical damage losses to the vehicle caused by collision with another object or vehicle.

Umbrella/Excess Liability

- Extends the limits of the primary (underlying) liability policies. Provides the source of protection for catastrophic loss.
- Replaces primary coverage once the primary aggregate limits of liability have been exhausted.
- Affords broader coverage (in some areas) than primary policies provide, subject to a self-insured retention amount.

What is a CCIP / OCIP?

Covers work at a specific project site

- Provides worker's compensation, general and excess liability insurance
- Covers General Contractor / CM & all tiers of enrolled subs

What is covered in a CCIP / OCIP?

Covered

- Worker's Compensation / Employer's Liability for all enrolled subcontractors who work at the site
- General Liability for 3rd party Bodily Injury/Property Damage
- Products / Completed Operations liability for 5-10 years beyond policy expiration of projects

Not Covered

- Builders Risk
- Property of subcontractors (owned, rented, borrowed equipment & materials not included in the project)
- Automobile Liability
- Subs off-site worker's compensation & liability exposures
- Professional Liability

CCIP / OCIP Worker's Compensation Insurance

What is different?

- The CM/GC pays for insurance of all enrolled subs
- Each subcontractor still receives their own WC policy
 - Must report payroll to CCIP Administrator
 - Subcontractor losses will affect subcontractors EMR
- Coverage is limited to a specific project
- Coverage is limited to work performed at the project site

CCIP / OCIP General Liability Insurance

What is different?

- All enrolled subs are added as additional named insured's to the policy
- Only one policy is produced per project
- Limits are reinstated each year except products/completed operations aggregate
- Coverage is limited to work performed at the site
- Insurance premiums are paid by owner or general contractor

CCIP / OCIP Advantages

Superior Risk Management Approach

- Uniform limits and coverage for all participants
- Avoids necessity to enforce indemnity or Additional Insured status
- Defense provided by single counsel/insurer in project's best interest
- Consolidated program offers the best defense strategy if a large loss occurs

CCIP Advantages

Significant Cost Savings

- More efficient method of procuring coverage
- Coverage gaps and overlaps are eliminated
- Reduces third party/cross litigation among trades

Builders Risk Insurance

- Protects General Contractor, Owner and Subcontractors against risk of financial loss in the event the insured work is damaged or destroyed prior to its completion
- This is a 1st party coverage (no fault) – it reduces or eliminates litigation between involved parties to determine financial responsibility
- Provides immediate financial relief to insured parties

Builders Risk Insurance

- Who is responsible for purchasing coverage?
 - Owner or Contractor on “behalf of all parties”
- Who should be included as an insured and why?
 - Owner – as the Owner of the Project, they have insurable interest in the project
 - General Contractor & Subcontractors of all tiers – as the Contractor (and Subs) – not the Owner – purchases the construction materials and is reimbursed only periodically during the construction process, the contractor has an insurable interest in the construction materials and partially completed work

Builders Risk Insurance

- Covered Perils
 - Policy should insure all risks of direct physical loss or damage to the property including earthquake, flood and windstorm
- Covered Property
 - Permanent Works – which includes all materials, supplies, equipment machinery...etc. which has been included in the estimated value of the project
 - Temporary Works– which includes all scaffolding, form work, fences, shoring, hoisting complexes, sidewalk bridges, trailers and temporary buildings incidental to the project and have been included in the estimated value

Builders Risk Insurance

- Waiver of Subrogation
 - Represents the right of a party (insured) to waive in writing, rights to recover against other parties prior to loss
 - The Contract should include mutual waivers of subrogation between all parties to the contract (owner and contractor)
 - The Insurance Policy must:
 - Grant rights to insureds to contractually waive rights of recovery with third parties (except architects & engineers)
 - Insurer must waive rights to subrogate against all insureds
 - Insurer should waive rights to recovery against parties where it was agreed to in writing prior to the loss

Contractors Equipment

- Job Site Equipment Owned by the General Contractor
- Leased Job Site Equipment in our care, custody and control for our legal liability
- Coverage includes:
 - Valuable Papers
 - Electronic Equipment (computers/PDAs...)
 - Job Site Trailers
 - Hoist Towers
 - Cranes

Professional Liability

- Contractor's Protective Professional Indemnity and Liability Insurance
- Two Coverage Parts
 - **Coverage A** – Covers claims where the general contractor is legally obligated to pay arising out of an act, error or omission with respect to rendering or failure to render “professional services”. (third party related coverage)
 - **Coverage B** – Indemnifies the general contractor for extra expense related losses that the general contractor sustains due to a design professional's (architect, engineer...etc.) act or omission. (first party related coverage)

Functions of Surety Bonds

- Bid Bonds
 - Guarantees that if awarded the job, contractor will perform the work at the price quoted and will provide additional bonds as required by the construction contract.
- Performance Bonds
 - Guarantees that the contractor will perform the work in accordance with the construction contract and related documents
- Payment Bonds
 - Guarantees that suppliers and subcontractors will be paid for materials and labor furnished to the contractor
 - Ultimate purpose of the payment bond is to guarantee the owner delivery of a project that is free of liens
 - Payment bonds also protect lower-tier contractors and suppliers from attempts by general contractors to improve their own cash flow by delaying payments to suppliers and subcontractor

Contractor Default Insurance

- CDI provides coverage for all projects enrolled in a policy year against losses directly and indirectly caused by the default of a subcontractor and/or supplier under the terms and conditions of the subcontract/purchase agreement executed during the policy period.
- Direct Costs Include:
 - The costs of completing the subcontractor/supplier's obligations under the subcontract or purchase order agreement
 - Cost of correcting defective or non-conforming work or materials
 - Legal, professional (including consultant, expert expenses, litigation and dispute resolution expenses), incurred by the general contractor that arises out of a subcontractor or supplier default

Subcontractor Default Insurance / SDI

- Direct Costs Include (con't):
 - Costs, charges and expenses incurred in the investigation, adjustment, litigation and resolution of a default
 - This includes the time and effort of general contractor staff involved in the remedy of a default
- Indirect Costs Include:
 - Expenses, including but not limited to, those paid by the general contractor because of liquidated damages, job acceleration and extended overhead that are the result of a subcontractor/supplier default.

Surety vs. SDI Comparison

- Control over Remedy
 - Surety will arrange completion of, or remedy a Subcontractor Default – surety maintains control over timing and actions
 - SDI indemnifies General Contractor for costs that result from the failure of a sub to fulfill the terms of the contract – general contractor maintains control over timing and actions
- Control over Selection
 - Surety must approve all subcontractors who will be bonded
 - General Contractor approves all subcontractors enrolled into CDI

Surety vs. SDI Comparison

- Coverage
 - Surety provides the payments required to remedy the default
 - Surety coverage is limited to the bond amount, which would typically be the subcontractor volume or a percentage
 - Surety provides coverage for bid defaults, performance defaults and for failure of subs to pay lower tier subs
 - Surety cannot cancel bond without authorization from obligee

Surety vs. SDI Comparison

- Coverage
 - SDI provides reimbursement for costs associated with remedying a default
 - SDI coverage is provided to policy limits, which in nearly all situations will be greater than individual subcontractor volume
 - SDI provides coverage for failure of the sub to fulfill any term or terms of the subcontract
 - SDI insurer can cancel policy for specified reasons without authorization of the obligee

Questions & Answers

NIOSH Directory of Construction Resources

<http://www.cdc.gov/niosh/construction/>

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Thank you!

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